Judgments

CA, CRIMINAL DIVISION

Neutral Citation Number: [2011] EWCA Crim 2919

No. 2011/04031/A3

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Thursday 24 November 2011

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES

(Lord Judge)

MR JUSTICE ROYCE

and

MR JUSTICE GLOBE

R E G I N A

- v -

GEORGINA SARAH ANNE LOUISE CHALLEN

Computer Aided Transcription by

Wordwave International Ltd (a Merrill Communications Company)

165 Fleet Street, London EC4

Telephone No: 020 7404 1400; Fax No: 020 7404 1424

(Official Shorthand Writers to the Court)

Mr P Gibbs QC appeared on behalf of the Applicant

Mr T Devlin appeared on behalf of the Crown

J U D G M E N T

(As Approved by the Court)

Thursday 24 November 2011

THE LORD CHIEF JUSTICE: I shall ask Mr Justice Royce to give the judgment of the court.

MR JUSTICE ROYCE:

1. Georgina Challen is aged 57. On 23 June 2011, in the Crown Court at Guildford, she was convicted of murder. She was sentenced by His Honour Judge Critchlow to imprisonment for life, with a minimum specified period of 22 years. Her application for leave to appeal against sentence was referred to the full court by the Registrar. We grant leave.

2. The facts were these. The appellant, who is known as Sally, had been married to the deceased for 31 years. They had two sons, James and David, both in their twenties. The deceased had his own business from which he had retired in 2008. They lived in a large detached house in Claygate, Surrey, and enjoyed a comfortable lifestyle.

3. For a number of years the appellant had been suspicious about her husband's fidelity, it appears with considerable justification. In the autumn of 2009 she informed him that she was leaving him and that she had bought a property of her own nearby. She moved out with her younger son and began divorce proceedings.

4. The deceased began to socialise with new friends whom he had met through websites. The appellant found the separation difficult to cope with. She felt jealous and lonely. Convinced that her husband was having an affair, she asked a neighbour to spy on him. In 2010 she began to access his e-mails and voicemail messages and to check his Facebook page.

5. In June 2010 he agreed to her request for a reconciliation. They began to draw up a post-nuptial agreement. The appellant was advised against entering into such an agreement, but such was her affection and love for her husband that she asked for the decree nisi that had been obtained to be rescinded. The two of them decided to let the family home and to go to Australia for six months. At this time they were still

living apart and she still had her suspicions about his friendships with other women. She believed that he was being unfair in relation to the financial aspect of the divorce proceedings and the proposals contained in the post-nuptial agreement.

6. In the week before his death she looked at his Facebook page several times, and in particular at an entry for a woman whom he had arranged to meet on the Sunday.

7. On Saturday 14 August the appellant and her husband spent the morning clearing out the house and garage. At about 3.30pm she was asked by him to go out and buy some provisions. Whilst she was gone, he telephoned the female friend and cancelled an arrangement that they had previously made to meet the following day. When she returned she noticed that the phone had been moved, and on calling the last dialled number heard a woman's voice.

8. She then asked her husband whether she could see him the following day. He replied "Don't question me", which was how he often spoke to her. She then made them something to eat. As he ate, she took a hammer which she had taken to the house in her handbag and repeatedly hit him from behind over the head with it. She then covered his body with blankets, left a note which said "I love you, Sally", changed her clothes, and then went home where she typed a note which she took back to his house and left in the kitchen.

9. She spent the evening in her own home. She saw her son, who did not notice anything unusual. On the Sunday morning she gave him a lift to work. Shortly before midday, she telephoned her cousin. She told her that she had killed her husband, that she was calling from the car park at Beachy Head, and that she was going to jump. Her cousin immediately called the police. As the appellant walked towards the cliff edge, she was approached by a chaplain. She told him that she could not live without her husband and that she had killed him. After about four hours she agreed to leave with a police negotiator and was arrested.

10. In her vehicle at Beachy Head, police found a copy of the note left in the deceased's kitchen. It read:

"Richard said he would take me back if I signed a post-nuptial agreement. I said I would and we both saw solicitors yesterday. I then found out he was seeing someone and sleeping with them and had no intention of taking me back. It was all a game so he could get everything. He was going to get me to sign and then issue divorce proceedings. I can't live without him. Said it would take him time but he felt the same. Now I find he is seeing women and sleeping with them. He did this in order to get his own back on me. All those prostitutes and other women -- how could he? Please look after David, James and Peppy. I am sorry but I can't live without Richard. All my love, Sally."

11. The pathologist who conducted the post-mortem examination concluded that death had been caused by severe blows to the head. There were at least twenty sites of injury, principally to the right side of the head, which resulted in multiple skull fractures, all consistent with the use of a hammer. There were nine sites of injury to his hands and arms, consistent with self-defence-type wounds.

12. The case had been contested on the basis of psychiatric evidence seeking to establish the partial defence of diminished responsibility. The court had before it the psychiatric report of Dr Exworthy, who had concluded that the appellant was suffering from a depressive disorder at the time of the killing such as to amount to an abnormality of mind. The prosecution psychiatrist, Dr Gilluley, came to a contrary conclusion.

13. In his sentencing observations the judge pointed out that the appellant had taken the hammer concealed in her handbag and that there was some premeditation. There had been evidence from her that she had visited the deceased's house three weeks earlier when she had taken with her a hammer but had not used it on that occasion. The judge concluded that it was clear that she was eaten up with jealousy at her

husband's friendships with other women, and had decided that if she could not have him then no one would. He considered the appropriate starting point for the minimum term under Schedule 21 to the Criminal Justice Act 2003. Paragraph 5A provides that where the offender took a knife or other weapon to the scene, intending to (a) commit any offence, or (b) have it available to use as a weapon, and used the knife or other weapon in committing the murder, then normally the offence is to be regarded as sufficiently serious for the starting point to be 25 years. The judge adopted that starting point, but having taken into account the measure of provocation which did not amount to a legal partial defence, the hurtful remarks directed at her, her good character, her age and concerns about her health, he reduced that starting point to 22 years. He accepted that she had killed the only man she had loved.

14. These starting points are not to be applied mechanistically. What is important is to determine where in the scale of seriousness a particular case comes. We are told that at the start of the sentencing hearing the judge proposed to take a starting point of 15 years, until it was pointed out to him that paragraph 5A applied not just to knives but to any weapon. That would suggest that he would not, on its facts, have considered this to be a case of particularly high seriousness justifying a minimum term in excess of 20 years.

15. We can understand why that should be so. We have had the opportunity of considering with care the statements from both sons made to the police in August 2010, and an additional statement made more recently. They make compelling reading. They do not demonstrate that the sons harbour any bitterness towards their mother for what she has done, only sadness about her predicament. One son is bitter towards the deceased father for, as he saw it, driving her to do what she did.

16. While we must approach such statements with some caution, sometimes they can be instructive in considering what the real background to an offence has been and the extent of culpability.

17. Stepping back, and taking all these factors into account, we conclude that the appropriate minimum term in this case is one of 18 years.

18. Accordingly, this appeal will be allowed to that extent.